

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HIPSAVER COMPANY, INC.,

Plaintiff,

V.

J.T. POSEY COMPANY,

Defendant.

AND RELATED COUNTERCLAIM.

Civil Action No. 05-10917 PBS

**OBJECTIONS OF J.T. POSEY COMPANY, INC. TO HIPSAVER'S
REVISED FINAL TRIAL EXHIBIT LIST**

J. T. Posey Company, Inc. (“Posey”) objects to the HipSaver’s Revised Final Trial Exhibit List served on August 8, 2007 as being untimely in view of the Court’s Pre-Trial Order of February 14, 2007 specifying that all exhibit lists were to be served by May 15, 2007. At least exhibit numbers 509a, 509b, 569a, 649a, 649b, 662-666 are listed in HipSaver’s Revised List for the first time. Additionally, Posey submits specific objections to the exhibits designated in HipSaver’s Revised Final Trial Exhibit List, as set forth in the attached Exhibit “A”.

Dated: August 10, 2007

J.T. POSEY COMPANY

By its attorneys,

/s/ Douglas H. Morseburg

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CERTIFICATE OF SERVICE

I certify that this document has been filed through the Electronic Case Filing System of the United States District Court for the District of Massachusetts and will be served electronically by the court to the Registered Participants identified in the Notice of Electronic filing.

August 10, 2007

/s/ Donald K. Piper
Donald K. Piper

EXHIBIT "A"

Exhibit "A"
POSEY'S OBJECTIONS TO HIPSAVER'S EXHIBIT LIST*

Exhibit No.	<u>Objections</u>	<u>Description</u>
001		Article re: hip protector use
004		Guidelines for Environmental Infection Control in Health-Care Facilities
005		Guidelines for Laundry in Health Care Facilities
007		Settlement Agreement
009		Tampere, Finland tests
010		Hip Pads: Effective Fracture Prevention
012		Posey Hipsters
035		New Published Study Reports High Compliance Rates and No Hip Fractures with HipSaver
055		2001 - 2004 Tax Forms for Hipsaver
056		2002 Tax Form for HipSaver
057		2003 Tax Form for HipSaver
058		HipSaver tax return 2004
061		Hip Protectors & The Laundry
065		Force Attenuation Properties of Various Trochanteric Padding Materials Under Typical Falling Conditions of the Elderly
081	2, 4	Email forwarding Posey Impact Test Results
085	2, 4	Photos of Posey Hipster with laundry label showing
086		Photos of Posey Hipster with laundry label showing; product information
087		Photos of Posey Hipster with laundry label showing; product information
088		Photo of HipSaver hip protectors with laundry label showing
089	1	Environmental Test Report on Various Hip Protectors
090	2, 4	Email enclosing impact test results on Posey Hipster
091		Environmental Test Report on Hip Protectors
092	1, 2, 3, 4, 6	Impact test results for various hip protectors
093		Environmental Test Report on Six Hip Protectors
094	1, 2, 4	Environmental Test Report on Thirteen Hip Protectors
095	2, 4	Photos of Posey Hipsters

** See key to objections on Page 8. All of the objections to the originally served exhibit list are included herein for the court's convenience.*

Exhibit "A"
POSEY'S OBJECTIONS TO HIPSAVER'S EXHIBIT LIST

Exhibit No.	<u>Objections</u>	<u>Description</u>
096	2, 4	Hip protector test data; email from McGrath to Minns requesting additional info regarding test
097	1, 10	Posey product info / advertisement
098	2, 4	Study: A Solution to Hip Fractures Using Performance Tested Hip Protectors
099	2, 4	Special Announcement" regarding unreliability of "white paper""
100	2, 3, 4	Email from Hedman to Goodwin
101	2, 4	Meeting notes from meeting on problems with Posey Hipsters
102	2, 4	Email string regarding Hipsters
103	2, 4	Email string regarding changing info in NCPS video
125		HipSaver US Sales 2001-2005
129		Letter enclosing impact test results of Goodwin hip pad
134		HipSaver Tax return 2003
135		HipSaver Tax return 2002
136		HipSaver Tax return 2001
143	2, 3, 4, 6, 10	Expert Report of Roy J. Epstein 09/25/2006
144		Expert Report of Creighton Hoffman and Philip Green
145	2, 3, 4, 6, 10	Supplemental Report of Roy J. Epstein 10/31/2006
159	2, 4, 6	NCPS video: Hip Protector information
166	2, 3, 4	Hayes Report to B&S
167	2, 3, 4	Hayes sur-rebuttal report
500		Hoffman and Green report
501	1, 2, 3, 4, 6	Health Hospitals article
502	1, 2, 3, 4, 6	Advertising, Conferences, Mailings
503	1, 2, 3, 4, 6	New Sales \$ for each advertising \$ spent
504	1, 2, 3, 4, 6	Advertisement for Posey Fall Management and Bed Safety Products
505	1, 2, 4, 6, 10	Advertisement for Posey Hipster
506	1, 2, 3, 4, 6	Advertisement for Posey Hipsters
507	2, 4	email titled: The ONLY SCIENTIFICALLY VALIDATED hip protector?
508	2	Hip protector pad cut in half to show material inside.
509		Pair of hip protectors with pads removed
509a	2, 3, 4, 6 10 (FRCP 26(a), 26(e) 37(a))	Pad from present generation HipSaver---HS2 000001a – (pictured in docid 12410)
509b	2, 3, 4, 6 10 (FRCP 26(a), 26(e))	Pad from present generation HipSaver---HS2 000001b – (pictured in docid 12410)

Exhibit "A"
POSEY'S OBJECTIONS TO HIPSAVER'S EXHIBIT LIST

Exhibit No.	<u>Objections</u>	<u>Description</u>
	37(a))	
510	1, 2, 3, 4, 6	Letter enclosing Posey Hipster mistakenly returned to HipSaver, and photos of same
511		Hip Protector Compliance: A 13-Month Study on Factors and Cost in a Long-Term Care Facility
512		Hip Pads: Effective Fracture Prevention
513	1, 10	Posey Hipsters ad
514	1, 10	Posey Hipsters ad
515	1, 10	Ad - Posey Hipsters Help Protect Against Injury from Falls
516	2, 4	HipSaver order form
517	2, 4	HipSaver order form
518	2, 3, 4, 6	HipSaver order form
519		Hip Pads: Effective Fracture Prevention
520		Photocopy of file folder labeled: #26 Sales [illegible] Costs
521		HipSaver Unit Cost Sheet for US Sales 2005
522		Photocopy of file folder labeled: #29 Financials
523	1, 2, 3, 6	Handwritten Ledger
524	1, 2, 3, 6	Handwritten Ledger
525	1, 2, 3, 6	Handwritten Ledger
526	1, 2, 3, 6	Handwritten Ledger
527	1, 2, 3, 6	Handwritten Ledger
528	1, 2, 3, 6	HipSaver Co. Financial Statement Worksheet for YTD 12/31/2004
529	1, 2, 3, 6	HipSaver Co. YTD General Ledger
530	1, 2, 3, 6	HipSaver Co. Bank of America Savings Account Analysis
531	1, 2, 3, 6	Annual Depreciation Report for the Fiscal Year Ended 12/31/2004
532	1, 2, 3, 6	HipSaver Co. Bank Reconciliation
533	1, 2, 3, 6	Payroll journals and Employer Tax returns
534	1, 2, 3, 6	Financial Statement Worksheets and General Ledger
535	1, 2, 3, 6	Hipsaver Co. YTD General Ledger
536	1, 2, 3, 6, 7	Handwritten note listing HipSaver's 2003 Financial situation
537	1, 2, 3, 6	HipSaver Co. Bank Reconciliation
538	1, 2, 3, 6	HipSaver Co. Annual Depreciation Report for the Fiscal Year Ended 12/31/2003

Exhibit "A"

POSEY'S OBJECTIONS TO HIPSAVER'S EXHIBIT LIST

Exhibit No.	<u>Objections</u>	<u>Description</u>
539	1, 2, 3, 6	HipSaver SEP Calculation, Payroll Tax, Quarter Wage Summary
540	1, 2, 3, 6	HipSaver Co. Financial Statement Worksheet for the Year to Date period ending 12/31/2002
541	1, 2, 3, 6	HipSaver Co. Year-to-date General Ledger For 01/03/2002 to 12/31/2002
542	1, 2, 3, 6	HipSaver Bank Statement as of 12/31/2002, Bank Balance as of 12/31/2002
543	1, 2, 3, 6	HipSaver Co. Annual Depreciation Report for the FY ended 12/31/2002, Retired Assets Report
544	1, 2, 3, 6	HipSaver Co. Salary Analysis
545	1, 2, 3, 6	HipSaver Co. Financial Statement Worksheet for YTD period ending 12/31/2001
546	1, 2, 3, 6	HipSaver Co. YTD General Ledger for 01/01/01 to 12/31/01
547	1, 2, 3, 6	Handwritten note listing outstanding checks
548	1, 2, 3, 6	HipSaver Co. Annual Depreciation Report For the FY ended 12/31/01
549	1, 2, 3, 4, 6, 10	FW: Posey Hipsters brand hip protectors
550	2, 4	Advertisement for Posey Hipsters
551		Advertisement for Posey EZ On Hipsters
552	2, 4	Journal of Biomechanical Engineering: Energy-Shunting Hip Padding System Attenuates Femoral Impact Force in a Simulated Fall
553	2, 4	Letter enclosing Hipsters for participation in NCPS test
554		HipSaver Tax Return 1995
555		HipSaver Tax Return 1996
556		HipSave tax return 1996
557		HipSaver Tax Return 1997
558		HipSaver Tax Return 1998
559		HipSaver Tax Return 1999
560		HipSaver Tax Return 2000
561	1, 2, 3, 4, 6	Protective Properties of Two Brands of Hip Protectors After Repeated Laundering - VISN 8 Patient Safety Center of Inquiry
562		HipSaver Tax return 2005 - Produced in CD production of 09/27/2006
563		CDC Guideline: Laundry: Washing Infected Material
564		Declaration of Ernest M. Posey
565		Posey Fall Management and Bed Safety Products catalog
566		Posey Healthcare Product Selection Guide catalog

Exhibit "A"

POSEY'S OBJECTIONS TO HIPSAVER'S EXHIBIT LIST

Exhibit No.	<u>Objections</u>	<u>Description</u>
567		Posey 2005 Healthcare Product Selection Guide catalog
568		Posey 2006 Healthcare Product Catalog
569	1, 3, 4, 6, 10 FRCP 26(a), 26(e) 37(a)	HipSaver US Sales 2001-2005
569a	1, 2, 3, 6, 7, 10 (FRCP 26(a), 26(e) 37(a)); Court Order dated July 19, 2007	Chart – total USA
570	2, 10 (FRCP 26(a), 26(e), 37(a)); Court Order dated July 19, 2007	HipSaver certificate of incorporation
571	2, 3, 4, 10 (FRCP 26(a), 26(e) 37(a)); Court Order dated July 19, 2007	FDA 2007 Annual Registration of Device Establishment
572		Settlement Agreement
573	10	Advertisement / Product info for Posey Hipsters Posey advertisements
574		Advertisement / Product info for Posey Hipsters
575		Advertisement / Product info for Posey Hipsters
576		Sales report spanning 2001 to September 2005
577	2, 4	Impact Data regarding Posey Hipsters
578		FW: Posey Hipsters consideration of poron foam/ cost considerations
579	1, 2, 4, 6	Email re: wash tests
580	1, 10	Posey Hipsters ad
581	1, 10	Posey Hipsters Proven Effective in Laboratory Test
582	2, 4	Posey Restraint Alternatives 2001 / fall prevention ad
583		Posey Care Alternatives Division 2002
584		Posey Care Alternatives Division - Fall Management / Fall Prevention - Hipsters, citing Garwood July 2001 test 2003 Posey care alternatives catalog~Hipster advertisements
585		Posey Healthcare Product Selection Guide
586		Posey 2005 Healthcare Product Selection Guide
587		Selected pages from the Posey 2006 catalog
588	10	Posey Hipsters package inserts
589	10	Posey EZ On Hipsters package inserts
590		Posey ad For Some Residents Every Fall is A Big One
591		Draft of Posey ad
592		Draft of Posey ad
593		Sales records for 2001 - September of 2005 Summary of Posey

Exhibit "A"
POSEY'S OBJECTIONS TO HIPSAVER'S EXHIBIT LIST

Exhibit No.	<u>Objections</u>	<u>Description</u>
		Sales 2001-2005
594		Ad in HME News for Posey Hipsters sweatpants and shorts HME news October 2005, Posey advertisement
595		2006 Posey Healthcare Product Selection Guide 2006 Healthcare Product catalog
596		Draft of Hipster ad
597		Draft of Hipster ad
598	1, 10	Draft of Posey Hipsters with High Durability Pads ad M6127
599	1, 10	Posey Hipsters III ad, citing July 2001 Garwood test
600		Draft of Hipster ad, Posey Hipsters HELP Protect Against Injury from Falls
601		Draft of Hipster ad, Posey Hipsters HELP Protect Against Injury from Falls
602	1, 10	Posey Hipsters ad citing CDC and Rubenstein
603	1, 10	Clinical References Supporting the Use of Hip Protectors
604		Posey Hipsters ad (M6127)
605		Posey EZ On Hipsters, and ad form (M5017)
606		Effects of Loading Rate on Strength of the Proximal Femur
607		Etiology and Prevention of Age-Related Hip Fractures
608		Comparison of Force Attenuation Properties of Four Different Hip Protectors Under Simulated Falling Conditions in the Elderly: An In Vitro Biomechanical Study
609		Energy-Shunting External Hip Protector Attenuates the Peak Femoral Impact Force below the Theoretical Fracture Threshold: An In Vitro Biomechanical Study under Falling Conditions of the Elderly
610		Prediction of Femoral Impact Forces in Falls on the Hip
611		Force Attenuation in Trochanteric Soft Tissues During Impact from a Fall
612	1, 2, 3, 4, 6	Advertisement for Posey Hipsters; illegible excerpt from The Lancet; Hip Fracture Disease: Coping with a contemporary epidemic; Effect of External Hip Protectors on Hip Fractures

Exhibit "A"
POSEY'S OBJECTIONS TO HIPSAVER'S EXHIBIT LIST

Exhibit No.	<u>Objections</u>	<u>Description</u>
613		Posey 2005 Healthcare Product Selection Guide
614		Sales of Posey Hipsters, 2001 - 2005
615		Domestic Sales of Posey Hipsters, 2004 - 2005
616		Monthly Hipster Sales 2004 to 2005
617		Advertisement for Posey Hipsters
618		Advertisement for Posey Hipsters
619		Advertisement for Posey Hipsters
620		Hipsaver Request #15 - Sales and Costs of Designated Fall Management Products 2001 to 2005
621		Hipsaver Request #16 - Sales and Costs of Hip Protection Products 2001 to 2005
622		Hipsaver Request #17 - Bill to Customer Names and Addresses
623		Hipsaver Request #17 - Ship to Address and Hip Protector Sales
624		Hipsaver Request #17 - Payment Application Data~~PC 003853- PC 003962~~Produced on CD
625		CD containing Hipster invoices; duplicate CD at PC 003964
626		CD containing data re: Hipster RMAs (comments re: returns); PC 003965-PC 004528
627		CD containing data re: Posey Hipster RMAs (comments re: returns)
628		Posey 2004 S-Corporation Return
629		Posey 2003 S-Corporation Return
630		Posey 2002 S-Corporation Return
631		Posey 2001 S-Corporation Return
632	1, 10	Hipsters advertisement
633		Posey Hipster catalog/advertisement
634		CD containing Hipsters returns 2001-2005
635		Place holder for CD of Excel spreadsheet also found at PC 005817 - PC 005841
636		Preliminary summary of Hayes' opinions / Hayes expert report
637	2, 3, 4, 6	Email exchange re picture of Posey pad showing incorrect positioning
638		Color Copy of 2002 Catalog / advertisement
639		Expert Designation Including Report of Gary Reich
640	1, 2, 3, 4, 6	Top 25 nursing home chains
641		Printout from www.hipprotector.com website
642	2, 4	Printout from CDC website

Exhibit "A"

POSEY'S OBJECTIONS TO HIPSAVER'S EXHIBIT LIST

Exhibit No.	<u>Objections</u>	<u>Description</u>
643	3, 4	Am. J of Phys Article: How to hit home runs: Optimum baseball bat swing parameters for maximum range trajectories
644	3, 4	Composite Structures article: Performance Assessment of Wood, Metal, and Composite Baseball bats
645	3, 4	Journal of Biomechanical Engineering article: Dynamic Models for Sideways Falls from Standing Height
646	2, 3, 4	Hayes Rebuttal Report to Ebrahimzadeh report (unsigned)
647	1, 10 (FRCP 26(a), 26(e), 37(a))	HipSaver Slimfit model
648	2, 4, 10 (FRCP 26(a), 26(e), 37(a)); Court Order dated July 19, 2007	2007 version of HipSaver pad (to be provided)
649a	2, 4, 10 (FRCP 26(a), 26(e), 37(a)); Court Order dated July 19, 2007	DermaSaver arm sleeve
649b	2, 4, 10 (FRCP 26(a), 26(e), 37(a)); Court Order dated July 19, 2007	DermaSaver heal protector
650	2, 3, 4, 10 (FRCP 26(a), 26(e), 37(a)); Court Order dated July 19, 2007	DermaSaver Product Guide (to be provided)
651	2, 4, 10 (FRCP 26(a), 26(e), 37(a)); Court Order dated July 19, 2007	Posey first generation Hipster (to be provided)
652	10 (FRCP 26(a), 26(e), 37(a)); Court Order dated July 19, 2007	Graphic of pelvic bones (chalk to be provided)
653	10 (FRCP 26(a), 26(e), 37(a)); Court Order dated July 19, 2007	HipSaver website pages
657	1, 2, 4, 6, 7	HipSaver's Stipulated Facts
658	1, 2, 3, 4, 6, 10 (FRCP 26(a), 26(e), 37(a)); Court Order dated July 19, 2007	DermaSaver sales to chains
659		Posey advertisement
660	10 (FRCP 26(a), 26(e), 37(a))	Video tape – The J.T. Posey Company Proudly Presents Hipsters III Part #8516
660a	10 (FRCP 26(a), 26(e), 37(a)); Court Order dated July 19, 2007	Excerpt from Video PC 5699
661	10 (FRCP 26(a), 26(e), 37(a)); Court Order dated	Hipsaver v. JT Posey powerpoint (Hayes)(formerly listed as Trial Exhibit 655)

Exhibit "A"

POSEY'S OBJECTIONS TO HIPSAVER'S EXHIBIT LIST

Exhibit No.	<u>Objections</u>	<u>Description</u>
	July 19, 2007	
662	1, 2, 3, 4, 6, 10 (FRCP 26(a), 26(e), 37(a)); Court Order dated July 19, 2007	Chart – Total USA No VAMCs
663	2, 3, 4, 5, 6, 10 (FRCP 26(a), 26(e), 37(a)); Court Order dated July 19, 2007	Letter from Patricia Jasper to William Brutocao
664	Court Order dated July 19, 2007	Declaration of Victoria Gay Lewis in Opposition to Hipsaver Motion for Partial Summary Judgment
665	Court Order dated July 19, 2007	Declaration of Victory Gay Lewis in Support of Motion of Defendant Posey Company for Order Transferring Venue to Central District of California.
666	2, 3, 4, 5	Special Announcement: HipSaver and Posey Hipster brand Hip Protectors

Objection Key:	
1	Authenticity
2	Relevance
3	Hearsay
4	FRE 403 (Prejudice, Confusion, Waste of Time, Cumulative)
5	FRE 404 (Inadmissible character Evidence)
6	Lack of Foundation
7	Best Evidence Rule
8	FRE 408 (Settlement Offer)
9	FRE 407 (Remedial Measures)
10	Other